STATE OF MICHIGAN

COURT OF APPEALS

CHRISTIAN PATRICK HINES,

Plaintiff/Counterdefendant-Appellant,

v

IRIS RACHELLE PETERSEN-HINES,

Defendant/Counterplaintiff-Appellee.

UNPUBLISHED
October 6, 2009

No. 291710
Livingston Circuit Court
LC No. 08-040260-DM

Before: Jansen, P.J., and Fort Hood and Gleicher, JJ.

PER CURIAM.

In this divorce and custody action, plaintiff, acting in propria persona, appeals as of right challenging the parenting time provisions of an April 2009 consent judgment entered by the circuit court. We affirm.

Plaintiff submits that the April 2009 consent judgment did not comport with the custody terms to which the parties had agreed on the record before a different judge. Specifically, plaintiff complains that the April 2009 consent judgment failed to reflect the parties' agreement that they would accommodate their minor children's parenting time requests. We initially emphasize that the circuit court judge who entered the April 2009 consent judgment retained the authority to accept or modify the terms of agreement concerning child custody matters that the parties had placed on the record in January 2009. As this Court explained in *Koron v Melendy*, 207 Mich App 188, 191; 523 NW2d 870 (1994),

> "It is self-evident, particularly as relates to custody and alimony matters in divorce cases and others of similar character involving considerations beyond the mere rights of the parties, that they do not have the power to control by agreement but determination must rest in the discretion of the court." [*Bowman v Coleman*, 356 Mich 390, 392-393; 97 NW2d 118 (1959).]
>
> While it is true that a trial court is not bound by the parties' stipulations or agreements regarding child custody, the court is not precluded from accepting the parties' agreement and including it in the orders of the court. Implicit in the trial court's acceptance of the parties' custody and visitation arrangement is the court's

> determination that the arrangement struck by the parties is in the child's best interest.
>
> As our Supreme Court said regarding matters included in a judgment of divorce, no matter how much negotiated and ultimately agreed on by the parties before the entry of the judgment, they are after all a part of the court's judgment, "presumably reached by (the court) only after profound deliberation and in the exercise of (its) traditional broad discretion . . . ." *Greene v Greene*, 357 Mich 196, 202; 98 NW2d 519 (1959). . . .

See also *Dick v Dick*, 210 Mich App 576, 583-584; 534 NW2d 185 (1995) (observing that "circuit courts [long] have zealously and carefully refrained from permitting the friend of the court or any other party or agency to make custody determinations"). Consequently, the circuit court properly acted within its broad authority to the extent that it undertook to modify the terms of the custodial consent agreement placed on the record in January 2009.

Moreover, our review of the record reveals that the April 2009 consent judgment's parenting time provisions closely track those discussed on the record in January 2009. The parties agreed in January 2009 that they would share joint legal and physical custody of their minor daughters, and that the physical custody arrangement would include defendant having parenting time on "Friday, Saturday and Sunday evenings" and Wednesday dinnertimes, that during summers "the parties will operate on a [sic] every other week schedule where they alternate" custody, and that the "parties will respect and honor and give deference to the children's . . . desires that they express regarding . . . parenting time." The visiting judge characterized the events to which the parties might defer to the children's wishes as encompassing "activites" "[l]ike camp or something like that," and plaintiff's counsel replied, "Correct." The relevant terms of the April 2009 consent judgment reflect the following:

> IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff and Defendant shall have joint legal and joint physical custody of the parties' minor children . . . .
>
> * * *
>
> IT IS FURTHER ORDERED AND ADJUDGED that the Defendant shall be entitled to parenting time every weekend from Friday after school to Monday, dropping off at school.
>
> IT IS FURTHER ORDERED AND ADJUDGED that Defendant shall be entitled to parenting time every Wednesday evening from 5:30 p.m. to 7:45 p.m.
>
> * * *
>
> IT IS FURTHER ORDERED AND ADJUDGED that the parties shall be entitled to visitation on alternate holidays . . . .
>
> IT IS FURTHER ORDERED AND ADJUDGED that, should Defendant wish, Defendant shall be permitted to file a motion with the Friend of the Court

> for a determination whether the school Christmas breaks should be divided equally and whether the winter break and any other school breaks should be alternated between the parties.
>
> * * *
>
> IT IS FURTHER ORDERED AND ADJUDGED that the parties shall alternate physical custody of the children each week in the school summer break commencing on the Sunday following the last day of school . . . .
>
> IT IS FURTHER ORDERED AND ADJUDGED, regarding summer parenting time as set out herein, that each party shall fairly consider and respect the children's reasonable requests regarding occasional parenting time deviations, including camp or other organized school or church-related activities.

At a hearing regarding entry of a consent judgment on April 3, 2009, the circuit court explained concerning the last clause quoted above its view that it had only changed a "word . . . here and there," and that although the parties should give some deference to the children's wishes, "the ultimate parenting decision is going to come down to an exchange between the two of you."

In conclusion, the record shows that the consent judgment language closely and fairly tracks the parties' expressed agreement. Plaintiff makes no suggestion that the circuit court's primarily linguistic alterations detrimentally affected the minor children's best interests, and we detect no hint of any detrimental effect in this regard. We simply find no abuse of the circuit court's broad discretion in crafting custody provisions. MCL 722.28; see also *Koron*, 207 Mich App 191-192 ("[W]hen a court acts in its judicial capacity to include a stipulation regarding custody and visitation in its judgment, we assume, absent the court's later acknowledgment to the contrary, appropriate deliberation as well as recognition and utilization of the applicable law.").

Plaintiff also maintains that defense counsel engaged in impermissible forum shopping by delaying prompt entry of the consent judgment by the judge who presided over the January 2009 hearing. The circuit court file documents that Judge David Reader received the initial assignment of this divorce action, and remained the presiding judge throughout the proceedings, except when Judge Charles Jameson substituted for Judge Reader during mid-January 2009 pretrial proceedings. After the January 2009 consent judgment discussion on the record, the parties disputed the terms of a written judgment, which assigned Judge Reader ultimately resolved in April 2009. Given that the judge assigned the case entered the consent judgment, and that plaintiff offers no substantiation of any improper conduct by defense counsel, we reject his forum shopping contention as completely unfounded. And because plaintiff has failed to prove any improper conduct by defense counsel, he is not entitled to relief from the consent judgment under MCR 2.612(C)(1)(c).

Affirmed.

/s/ Kathleen Jansen
/s/ Karen M. Fort Hood
/s/ Elizabeth L. Gleicher